

**REMARKS/ARGUMENTS**

Claims 1-55 are pending.

Claims 1-13, 16-30, 33-47 and 50-55 were rejected under 35 USC §103 as being obvious over Weingardt et al., US Patent No. 5,275,400 (hereinafter "Weingardt"), in view of Walker et al., US Patent No. 6,086,477 (hereinafter "Walker '477").

Claims 14, 15, 31, 32, 48 and 49 were rejected under 35 USC §103 as being obvious over Weingardt in view of Walker '477 and further in view of Walker et al., US Patent No. 6,277,972 (hereinafter "Walker '972").

Applicants respectfully request reconsideration and withdrawal of these rejections for the following reasons. These references were discussed in a prior response.

Applicants respectfully assert that Weingardt does not teach or suggest that the total value of all tokens is derived from a source other than the players as is recited in all pending claims. The Examiner has cited to column 13, line 55 to column 14, line 2 for the proposition that Weingardt does teach this limitation. However, upon review of this citation and the remainder of Weingardt it is clear that this is not the case. The specific citation, for one, teaches that the seeding of progressive pools in bingo is a cost of doing business because no provision is made for the recovery of the house's seed money "other than the initial receipt of the fees charged to the players to participate." (column 13, lines 67-68, emphasis added) This clearly teaches that at least a portion of the value is derived from the players. The claims on the other hand recite that "the total value of all tokens is derived from a source other than the players." (emphasis added) Therefore, this portion of Weingardt fails to teach or suggest such limitation as is alleged in the rejection. Furthermore, the remainder of Weingardt fails to teach or suggest such limitation, and in fact teaches away from such limitation. For example, the paragraph following the above citation teaches that "a portion of each initial wager can be designated to go into one or more future pools..." (emphasis added), wherein the "initial wager" is provided by a player. This clearly teaches that players provide at least a portion of the seed money for progressive pools.

Accordingly, Applicants respectfully request withdrawal of these rejections to the independent claims, and all claims depending therefrom based at least on their dependency, for at least the above reasons.

Applicants further respectfully assert that none of these references teach providing a statistically positive token return to the players as is recited in all claims. It was stated in the Final Office Action (and prior Office Actions) that Weingardt does not teach the concept of a guaranteed win or statistically positive token return, but that Walker '477 teaches that providing a guaranteed win increases participation in the game. The Final Office Action (and prior Office Actions) concludes that it would therefore be obvious to include a guaranteed win feature in Weingardt's pari-mutuel gambling method to increase participation. Whether this is true or not, Applicants maintain that neither reference teaches or suggests providing a statistically positive token return as is recited in the pending claims, and such combination would therefore not result in a game that provides a statistically positive token return to the players.

Walker '477 teaches a lottery entry that is effective for consideration in lottery drawings until that entry wins a drawing-based prize. See, e.g., column 3, lines 21-40. The only aspect of Walker '477 that may be considered as a token is the lottery ticket purchased or otherwise obtained by the player, which lottery ticket may be considered in subsequent lottery drawings until it has won. Nowhere, however, does Walker '477 teach providing a statistically positive return of lottery tickets (*i.e.*, tokens) to a player. Thus, combining Weingardt and Walker '477 would not result in a game that provides a statistically positive token return.

Further, a "guaranteed win feature" discussed in the rejection is not the same as providing a statistically positive token return to players as is recited in the claims. That is, providing a statistically positive token return does not provide a guaranteed win in a value sense. In some cases, a player may not gain tokens during gameplay in the present invention, and would therefore not experience an increase in tokens. In some cases, especially where a player plays for a longer period of time, the player may gain tokens during the course of play, and thereby will have gained tokens due to the statistically positive token return aspect. However, this does not guarantee a "win" in a value sense, as the total number of tokens in the set of tokens may have increased. With a total value of all tokens in the set of tokens being constant, as is recited

in the claims, an increase in the number of tokens a player has accumulated may not result in a greater token-equivalent value if the number of tokens in the set of tokens has increased too much. Thus, although Walker '477 may teach that providing a guaranteed win increases participation in a game, this does not provide a teaching, a suggestion or motivation to alter Weingardt to include a statistically positive return of tokens to the players.

Thus, a combination of Weingardt and Walker '477, or providing some form of guaranteed win feature in Weingardt, would not result in a game that provides a statistically positive token return as is recited in all independent claims, and in all dependent claims by virtue of their dependency.

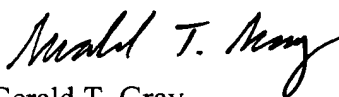
Accordingly, Applicants respectfully request withdrawal of these rejections for at least the above reasons.

### CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 925-472-5000.

Respectfully submitted,

  
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